



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 14 2014

REPLY TO THE ATTENTION OF:

**SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
OVERNIGHT DELIVERY: RETURN RECEIPT**

SR-6J

The Honorable Pete Buttigieg
Mayor
City of South Bend
Suite 1400 N
227 West Jefferson Blvd.
South Bend, Indiana 46601

Re: City of South Bend
Beck's Lake Site in South Bend, IN
RI/FS Special Notice Letter /Demand for Costs

Dear Mayor Buttigieg:

This letter follows the General Notice Letter that the U.S. Environmental Protection Agency (EPA) sent to the City of South Bend (South Bend) on October 29, 2013 in connection with the Beck's Lake Site (the Site), located in South Bend, Indiana. In that letter, EPA notified South Bend of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by EPA in responding to releases at the Site. EPA is now contacting you, to offer South Bend the opportunity to conduct a Remedial Investigation and Feasibility Study and to resolve South Bend's liability for certain EPA's response costs at the Site.

Background

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, EPA identified South Bend, the current owner of the Site, as one of the potentially responsible parties (PRPs). As of this writing, the only other PRP identified is Honeywell International, Inc. (Honeywell). Under the federal Superfund law, South Bend and the other PRPs at the Site are responsible for the costs of cleaning up the Site.

Special Notice and Negotiation Moratorium

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between the PRPs and EPA for performance of a Remedial Investigation and Feasibility Study (RI/FS) at the Site. A Remedial Investigation (RI) identifies site characteristics and defines the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site. A Feasibility Study (FS) evaluates different cleanup options for the Site.

Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day period, the PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the RI/FS. The 60-day negotiation period ends 60 days from the date of this letter. The 60-day negotiation moratorium will be extended for an additional thirty (30) days if PRPs provide EPA with a “good faith offer” to conduct or finance the RI/FS. Under this 90-day negotiation moratorium, negotiations will conclude 90 days from the date of this letter. If settlement is reached between EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in an administrative order on consent for RI/FS (AOC or Administrative Order).

Good Faith Offer

A proposed Administrative Order and Model Statement of Work are enclosed to assist Honeywell in developing a “good faith offer.” As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if the PRPs submit a “good faith offer” to EPA. A “good faith offer” to conduct or finance the RI/FS is a written proposal that demonstrates the PRPs’ qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

A statement of willingness by the PRPs to conduct or finance an RI/FS that is consistent with EPA’s Statement of Work and draft Administrative Order and provides a sufficient basis for further negotiations;

A paragraph-by-paragraph response to EPA’s Statement of Work and draft Administrative Order;

A detailed description of the work plan identifying how the PRPs plan to proceed with the work;

A demonstration of the PRPs’ technical capability to carry out the RI/FS, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);

A demonstration of the PRPs’ capability to finance the RI/FS;

A statement of willingness by the PRPs to reimburse EPA for costs incurred in overseeing the PRPs’ conduct of the RI/FS; and

The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

Demand for Reimbursement of Costs

With this letter, EPA encourages South Bend to voluntarily negotiate a consent order in which Honeywell and the City of South Bend agree to perform the RI/FS and also demands reimbursement of EPA for its costs incurred to date.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include: site assessment, surface soil testing and risk assessment of LaSalle Park, and community involvement activities. EPA is seeking to recover from the PRPs at the Site its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the approximate total response costs identified through November 30, 2013 for the Site are \$418,903.18. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from Honeywell and the City of South Bend for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed as Attachment 1.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to South Bend. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether South Bend should notify its insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of South Bend's first contact with the landfill operator formerly located at the Beck's Lake Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that South Bend files for protection in a bankruptcy court, South Bend must include EPA as creditor, because EPA has a potential claim against South Bend. EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

PRP Coordination

EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. This Administrative Record will be located at the St. Joseph Public Library, 304 S. Main St., South Bend, IN 46601, and will be available to the public for inspection and comment. The Administrative Record is available for inspection and comment at the Superfund Records Center, EPA Region 5, 77 West Jackson Blvd., Chicago, IL

60604-3590. You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

PRP Response and EPA Contact Person

You are encouraged to contact EPA by May 30, 2014 to indicate South Bend's willingness to participate in future negotiations concerning this Site. If EPA does not receive a timely response, EPA will assume that South Bend does not wish to negotiate a resolution of its liabilities in connection with the Site, and that South Bend has declined any involvement in performing the response activities.

South Bend's response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the RI/FS for the Site, should be sent to:

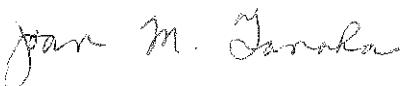
U.S. Environmental Protection Agency Region 5
W. Owen Thompson, Remedial Project Manager
Superfund Division, Remedial Response Section Seven, (SR-6J)
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 886-4843 or thompson.owen@epa.gov

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

In addition, EPA has notified the Federal and State Natural Resource Trustees of its intention to perform or enter into negotiations for the performance of response actions at the Site. If South Bend has any questions regarding the technical aspects of this letter, please contact Owen Thompson, Remedial Project Manager, at (312) 886-4843. Please direct legal questions, to Mary Fulghum, EPA Regional Counsel, at (312) 886-4683.

My staff and I look forward to working with you in the coming months.

Sincerely,



Joan M. Tanaka, Chief
Regional Response Branch #1, Superfund Division

Enclosures

1. Itemized Cost Summary
2. Draft Administrative Order on Consent for RI/FS
3. Draft Scope of Work
4. Site Figure

cc:

Mark Neal, Deputy Mayor, City of South Bend
Cristal C. Brisco, Corporation Counsel, City of South Bend
Stephen A. Studer, Krieg DeVault LLP

cc w/o Itemized Cost Summary:

Kerry A. Dzubiak, Arnold & Porter
John M. Davis, State Natural Resources Co-Trustee, Indiana DNR
Carl Wodrich, Director of Ecological Services, Indiana DNR
Elizabeth Admire, State Natural Resources Co-Trustee, IDEM
James Smith, NRD Coordinator, IDEM
Annette Trowbridge, Environmental Contaminants program Coordinator, DOI
Wayne Babcock, Field Solicitor, DOI
Jessica H. Fliss, Senior Environmental Manager, IDEM